

15. Defendant, Susan M. Seltsam, a Commissioner of the State Corporation Commission of the State of Kansas, is named in her official capacity as a representative of the the State Corporation Commission of the State of Kansas. Service of process on Timothy E. McKee should be made by certified mail to The Attorney General of the State Corporation Commission of the State of Kansas, Judicial Center, Second Floor Topeka, KS 66612.

16. Defendant, John Wine, a Commissioner of the State Corporation Commission of the State of Kansas, is named in his official capacity as a representative of the State of Kansas. Service of process on Timothy E. McKee should be made by certified mail to The Attorney General of the State of Kansas, Judicial Center, Second Floor Topeka, KS 66612.

III. JURISDICTION AND VENUE

17. This is an action for a preliminary and permanent injunction and declaratory judgment for the purpose of determining a federal question of actual controversy between the parties. This Court has jurisdiction of the claims presented pursuant to 28 U.S.C. §§ 1331 and 2201.

18. Venue is proper pursuant to 28 U.S.C. § 1391 because the Corporation Commission is an agency of the State of Kansas and because a substantial portion of the events giving rise to the claims occurred in this District.

IV. FACTUAL ALLEGATIONS

19. Plaintiffs in this case are members of the CMS industry within the State of Kansas.

20. Regulation of telecommunications services in the United States is largely governed by the Communications Act of 1934, as amended, 47 U.S.C. § 1st, et seq. (the "Communications Act"). The authority to regulate providers of Commercial Mobile Services is conferred upon the Federal Communications Commission. The Communications Act defines Commercial Mobile

Services to include "any mobile service...that is provided for profit and makes interconnected service available (a) to the public or (b) to such classes of such eligible users as to be effectively available to a substantial portion of the public..." 47 U.S.C. § 332(d)(1). Personal Communication Services and Cellular Services fall within the definition of Commercial Mobile Services.

21. The Communications Act provides that state regulatory authorities such as the Corporation Commission may not regulate the rates charged by CMS providers, and that those authorities may not impose universal service funding obligations on CMS providers unless a finding has been made by the FCC that CMS providers are a substitute for a substantial portion of land line telecommunications services provided in Kansas:

(3) State Preemption. -- (A) Notwithstanding Sections 2(b) and 221 (b), no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services. Nothing in this subparagraph shall exempt providers of commercial mobile services (where such services are a substitute for land line telephone exchange service for a substantial portion of the communications within such State) from requirements imposed by a State commission on all providers of telecommunications services necessary to ensure the universal availability of telecommunications service at affordable rates...

47 U.S.C. § 332(c)(3) (emphasis supplied).

22. On April 4, 1996, the Corporation Commission established the Kansas Universal Service Fund ("KUSF") to administer the collection and distribution of universal service support payments. The purported purpose of the KUSF is to ensure the universal availability of telecommunications service in Kansas.

23. On July 1, 1996, the Kansas Telecommunications Act (the "State Act") became effective. The State Act directs the Corporation Commission to require every telecommunications

carrier, including wireless telecommunications providers (also known as CMS Providers), to contribute to the KUSF. K.S.A. § 66-2008(b).

24. Also on July 1, 1996, the Corporation Commission decided to consider guidelines regarding universal service in Docket Nos. 190, 492-U and 94-GIMT-478-GIT, entitled *In the Matter of A General Investigation Into Competition Within the Telecommunications Industry in the State of Kansas*. A hearing was held for all issues relating to the KUSF on August 12-15, 1996.

25. Sprint Spectrum, CMT Partners, Topeka Cellular and AirTouch participated in the August 12-15, 1996 Hearings.

26. During or after the August 12-15, 1996 hearing, no testimony or evidence was offered to support a finding that CMS is a substitute for any portion of land line telephone exchange services provided within the state of Kansas. The only testimony or evidence even relating to the subject was provided by Mr. Gerald Lammers, Managing Telecommunications Auditor/Analyst, of the Corporation Commission Staff during the hearing. He testified that there is no evidence that CMS is an equivalent substitute for any portion of land line services within Kansas.

27. On August 28, 1996, Mountain Solutions filed a Motion to Intervene in the Corporation Commission proceeding, which the Corporation Commission granted on September 12, 1996. Plaintiffs, Liberty Cellular, Mercury Cellular, Western Wireless, Dobson Cellular and DCC PSC did not participate in the Corporation Commission proceeding.

28. On September 16, 1996, Sprint Spectrum filed its post-hearing brief and argued that any ruling by the Corporation Commission requiring CMS providers to contribute to the

KUSF would violate the preemption mandate of the Communications Act, specifically 47 U.S.C. § 332(C)(3).

29. On September 16, 1996, CMT Partners, Topeka Cellular and AirTouch filed their post-hearing brief in which they argued that the Kansas Telecommunications Act impermissibly invades an activity of interstate commerce that has been fully occupied by the federal government through the Communications Act of 1934, as amended.

30. On December 27, 1996, the Corporation Commission issued an Order ("Corporation Commission Order") in which it made findings of fact and conclusions of law on all matters relating to the KUSF. A true and correct copy of the Order is attached hereto as Exhibit A.

31. In its December 27, 1996 Order, the Corporation Commission directed CMS providers, among other telecommunications providers, to contribute to the KUSF. The Corporation Commission found that neither the State Act nor the Corporation Commission's rulings were in violation of, or inconsistent with, the Federal Act. However, in so ruling, the Corporation Commission failed to make a finding required under the Federal Act, viz., that CMS providers are a substitute for a substantial portion of land line telephone exchange services within the State of Kansas. The Corporation Commission failed to address the issue altogether.

32. In Paragraph 187 of the December 27, 1996 Order, the Corporation Commission held that CMS providers must contribute up to 14.1% of their retail revenue to the KUSF in accordance with Paragraphs 109 and 110 and the operative paragraph appearing on page 77 of the Order. This mandate applies to both Cellular Service and Personal Communications Service providers, both of which are CMS providers..

33. But under the Communications Act, neither the State of Kansas nor the Corporation Commission can require Commercial Mobile Service providers to contribute to the Kansas Universal Service Fund in the absence of a finding that CMS is a substitute for a substantial portion of land line telephone exchange services within the State of Kansas .

34. The Corporation Commission's Order and the State Act completely ignore the preemption mandate in Section 332(c)(3) of the Communications Act. The Corporation Commission's failure to acknowledge and defer to federal preemption is in violation of the Supremacy Clause in Article VI, Cl. 2 of the Constitution of the United States and will cause Plaintiffs imminent and irreparable harm.

35. On January 14, 1997, Mountain Solutions, Sprint Spectrum, Mercury Cellular, CMT Partners, Topeka Cellular and AirTouch filed Petitions for Reconsideration requesting that the Corporation Commission reconsider its findings in Paragraph 187, in which it unlawfully imposed upon CMS providers an obligation to fund the KUSF. True and correct copies of those Petitions for Reconsideration are attached hereto, and incorporated herein, at Exhibit B.

36. On February 3, 1997, the Corporation Commission issued an Order on Reconsideration in which it denied Sprint Spectrum's, Mountain Solutions', CMT Partners', Topeka Cellular's and AirTouch's Petition for Reconsideration of its findings in Paragraph 187 and in paragraphs related thereto. The Corporation Commission refused to consider the Petition for Reconsideration filed by Mercury Cellular on the grounds that Mercury Cellular was not a formal party to the KUSF proceeding.

37. Prior to the Corporation Commission Orders of December 27, 1996 and February 3, 1997, and pursuant to K.S.A. § 66-1143(b), the Corporation Commission had no jurisdiction over Plaintiffs and had not exercised jurisdiction over them.

38. On February 14, 1997, NECA sent Plaintiffs a KUSF packet. In the packet, NECA directs Plaintiffs to pay a 9% assessment on all intrastate retail revenues beginning in the month of March, 1997. On April 15, Plaintiffs are required to make KUSF payments to NECA based on March, 1997 revenues. Payments are to be made on the 15th day of each following month based on revenues from the proceeding month. In 1998, the assessment will rise to 12.13% and in 1999, to 13.68%.

39. NECA's directions were made pursuant to the December 27, 1996 Order of the Corporation Commission.

40. On February 19, 1997, the Corporation issued an order authorizing NECA to assess late payment fees for any delinquent KUSF payment.

COUNT I - PRELIMINARY AND PERMANENT INJUNCTION

41. Plaintiffs incorporate by this reference the allegations of paragraphs 1 through 40 as though fully set forth herein.

42. Plaintiffs Liberty Cellular, CMT Partners, Topeka Cellular, AirTouch, Western Wireless, Dobson Cellular and Mercury Cellular (sometimes referred to as the "Cellular Plaintiffs") currently provide cellular services throughout the State of Kansas. If the Cellular Plaintiffs choose not to charge customers the KUSF assessment, the contribution paid by the Cellular Plaintiffs will be a substantial portion of their future pre-tax income. This will have a severe impact on the Cellular Plaintiffs' future business plans and marketing opportunities. If the Cellular Plaintiffs choose to pass the KUSF assessment through to their customers, which they believe they will be forced to do, the Cellular Plaintiffs risk losing a substantial number of their customers and usage of service, with concomitant loss of substantial revenue.

43. Plaintiffs Mountain Solutions, Sprint Spectrum and DCC .PSC (the "PCS Plaintiffs") are in the process of building facilities from which they will offer services within the State of Kansas in the near future. An additional 9% to 13.68% cost of entry into the Kansas market would severely inhibit the offering of Personal Communications Services within the state of Kansas. Should the PCS Plaintiffs choose to charge these assessments to their future customers, the market effect in terms of customers and usage of service would be substantial and potentially devastating.

44. Additionally, the local calling areas for Cellular Services and Personal Communications Services are not defined by state lines and extend beyond Kansas into Nebraska, Missouri and Oklahoma. Therefore, an additional sophisticated billing system to separate revenues derived from purely intrastate calls would be required under the Corporation Commission's Order of December 26, 1997.

45. If the Corporation Commission Order and the State Act are not declared invalid by this Court, and if their enforcement is not immediately enjoined, the Cellular Plaintiffs will suffer irreparable injury in that the increase in the retail revenue that Cellular Plaintiffs will have to contribute to the KUSF will have a dramatic impact on their future business and jeopardize a substantial portion of their customer base. The damage that will arise from such an impact on Cellular Plaintiffs' future revenue and customers base cannot be recovered from the Defendants; therefore, there is no adequate remedy at law.

46. If the Corporation Commission Order and the State Act are not declared invalid by this Court, and if their enforcement is not immediately enjoined, the PCS Plaintiffs will suffer irreparable injury in that they would be required to expend a considerable amount of non-recoverable up-front cost to comply with the Corporation Commission Order. Additionally, the

increased cost of providing service within the State of Kansas resulting from the KUSF assessment will severely inhibit the PCS Plaintiffs' ability to enter and compete in the Personal Communication Service market. The damages that will arise from the KUSF assessment required under the Corporation Commission's Order cannot be recovered from the Defendants; therefore, there is no adequate remedy at law.

47. The threatened injury to Plaintiffs outweighs any injury to Defendants.

48. An injunction will further the public interest in that it will ensure that the State of Kansas and the Corporation Commission do not continue to violate the Supremacy Clause in Article VI, Cl. 2 of the Constitution of the United States, because the actions of the Defendants enumerated herein interfere with, and are preempted by, Section 332(c) of the Communications Act.

49. There exists a substantial likelihood that Plaintiffs will prevail on the merits of their complaint by demonstrating that the State Act and the Corporation Commission's Orders of December 27, 1996 and February 3, 1997, are contrary to the Supremacy Clause in Article VI, Cl. 2 of the Constitution of the United States because they interfere with, and are preempted by, Section 332(c) of the Communications Act..

WHEREFORE, Plaintiffs request that this Court:

(i) Issue a Preliminary Injunction pursuant to Fed R. Civ. Pr. 65 ordering Defendants, The State of Kansas and The State Corporation Commission of the State of Kansas, the National Exchange Carrier Association, Inc., and all those in active concert or participation with them, to refrain from implementing Paragraph 187 of the Corporation Commission's December 27, 1996 Order and any other paragraph related thereto, under which Commercial Mobile Service

providers, including the Plaintiffs, are required to contribute to the Kansas Universal Service Fund;

(ii) Issue a Permanent Injunction perpetually enjoining and restraining defendants, The State of Kansas, The State Corporation Commission of the State of Kansas, The National Exchange Carriers Association, Inc., and all those acting in active concert or participation with them, from implementing Paragraph 187 of the Corporation Commission's December 27, 1996 Order and any other paragraph related thereto, under which Commercial Mobile Service providers, including the Plaintiffs, are required to contribute to the Kansas Universal Service Fund; and

(iii) Issue an order granting such other and further relief as this Court deems just and proper.

COUNT II - DECLARATORY JUDGMENT

50. Plaintiffs incorporate by this reference the allegations in paragraphs 1 through 49 as though fully set forth herein.

51. The State Act is invalid as it is contrary to the Supremacy Clause in Article IV, Cl. 2 of the United States Constitution because it interferes with, and is preempted by, Section 332(C) of the Communications Act.

52. The Corporation Commission Order of December 27, 1996 is invalid as it is contrary to Supremacy Clause in Article VI, Cl. 2 of the United States Constitution because it interferes with, and is preempted by, Section 332(c) of the Communications Act.

53. Plaintiffs desire a judicial determination of their rights and duties, and a declaration that K.S.A. § 66-2008(b) of the State Act and the Corporation Commission's December 27, 1996 and February 3, 1997 Orders, as they pertain to the dispute outlined herein, are invalid.

54. A judicial determination is necessary and appropriate at this time under all of the circumstances so that Plaintiffs may determine their duties and obligations under federal and state law, and any rules duly adopted by the Corporation Commission.

55. A judicial determination is further necessary and appropriate at this time in order to avoid substantial potentially unnecessary, unrecoverable and devastating costs associated with participating and entering the Commercial Mobile Services industry within the State of Kansas.

WHEREFORE, Plaintiffs request that this Court:

(i) Issue an order declaring that K.S.A. § 66-2008(b) of the State Act invalid and preempted by Section 332(C) of the Communications Act;

(ii) Issue an order declaring that Paragraph 187 of the Corporation Commission's December 27, 1996 Order and any other paragraph related thereto, under which Commercial Mobile Service providers are ordered to contribute to the Kansas Universal Service Fund is preempted by Section 332(c) of the Communications Act;

(iii) Issue an order declaring that Plaintiffs are not required to submit Kansas Universal Service Fund payments to the National Exchange Carrier Association, Inc. until such time as the FCC finds that Commercial Mobile Services are a substitute for a substantial portion of land line telephone exchange services in Kansas;

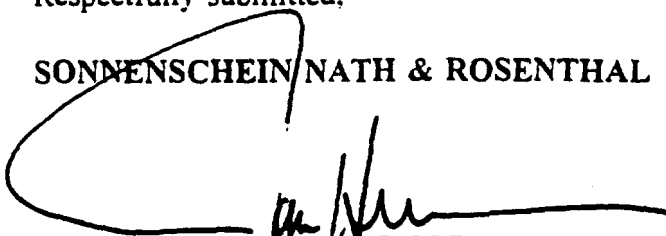
(iv) Issue an order declaring that Plaintiffs are not required to account for intrastate revenue received within the State of Kansas for the purpose of contributions to the Kansas Universal Service Fund until such time as the FCC finds that Commercial Mobile Services are a substitute for a substantial portion of land line telephone exchange services in Kansas; and

(v) Issue an order declaring that Plaintiffs are not subject to late payment fees under the February 19, 1997 Order of the Corporation Commission

(vi) Issue an order granting such other and further relief as this Court deems just and proper.

Respectfully submitted,

SONNENSCHN NATH & ROSENTHAL




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Facsimile: (816) 531-7545

KS #14440
KS #14847

ATTORNEYS FOR PLAINTIFFS MOUNTAIN
SOLUTIONS, INC., SPRINT SPECTRUM, L.P.,
LIBERTY CELLULAR, INC., MERCURY CELLULAR
OF KANSAS, INC., WESTERN WIRELESS
CORPORATION, DCC PCS, INC., and DOBSON
CELLULAR OF KANSAS/MISSOURI, INC.

-and-

MORRISON & HECKER, L.L.P.



Marc E. Elkins
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KS #11517

ATTORNEY FOR PLAINTIFFS
AIRTOUCH CELLULAR OF KANSAS, INC.,
TOPEKA CELLULAR TELEPHONE COMPANY, INC.
and CMT PARTNERS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

MOUNTAIN SOLUTIONS, INC.,
7720 West Jefferson
Lakewood, CO 80235,

SPRINT SPECTRUM, L.P.,
4900 Main Street
Kansas City, MO 64111,

LIBERTY CELLULAR, INC.,
621 Westport Boulevard
Salina, KS 67401

TOPEKA CELLULAR TELEPHONE COMPANY, INC.
10895 Lowell
Overland Park, KS 66210,

AIRTOUCH CELLULAR
OF KANSAS, INC.
10895 Lowell
Overland Park, KS 66210,

MERCURY CELLULAR OF KANSAS, INC.
Hilsernia Tower
One Lake Shore Drive
19TH Floor
Lake Charles, LA 70624,

WESTERN WIRELESS CORPORATION
2001 NW Sammamish Rd.
Issaquah, WA 98027

CMT PARTNERS,
10895 Lowell
Overland Park, KS 66210, and

DCC PCS, INC.,
13439 North Broadway Extension
Suite 100
Oklahoma City, OK 73114

Case No.:

97-2116-KHM

DOBSON CELLULAR OF KANSAS/
MISSOURI, INC.
13439 North Broadway Extension
Suite 100
Oklahoma City, OK 73114

Plaintiffs,

v.

THE STATE CORPORATION
COMMISSION OF THE
STATE OF KANSAS,

Serve:

The Attorney General
of the State of Kansas
Second Floor, Judicial Center
Topeka, KS 66612, and

NATIONAL EXCHANGE
CARRIER ASSOCIATION, INC.

Serve:

The Corporation
Company, Inc.
515 South Kansas Ave.
Topeka, KS 63603, and

CARLA STOVALL, ATTORNEY GENERAL OF
THE STATE OF KANSAS, IN HER OFFICIAL
CAPACITY

Serve:

The Attorney General
of the State of Kansas
Second Floor, Judicial Center
Topeka, KS 66612, and

TIMOTHY E. MCKEE, COMMISSIONER OF
THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS, IN HIS
OFFICIAL CAPACITY

Serve:

The Attorney General
of the State of Kansas
Second Floor, Judicial Center
Topeka, KS 66612, and

SUSAN M. SELTSAM, COMMISSIONER OF
THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS, IN HER
OFFICIAL CAPACITY

Serve:

The Attorney General
of the State of Kansas
Second Floor, Judicial Center
Topeka, KS 66612, and

JOHN WINE, COMMISSIONER OF THE
STATE CORPORATION COMMISSION OF THE
STATE OF KANSAS, IN HIS OFFICIAL
CAPACITY

Serve:

The Attorney General
of the State of Kansas
Second Floor, Judicial Center
Topeka, KS 66612,

Defendants.

**VERIFIED COMPLAINT
FOR PRELIMINARY AND PERMANENT INJUNCTION AND
DECLARATORY JUDGMENT**

Sprint Spectrum, L.P., Mountain Solutions, Inc., Liberty Cellular, Inc., Topeka Cellular Telephone Company, Inc., AirTouch Cellular of Kansas, Inc., CMT Partners, Mercury Cellular of Kansas, Inc., DCC PSC, Inc. Corporation, Dobson Cellular of Kansas/Missouri, Inc. and Western Wireless Corporation ("Plaintiffs"), for their Complaint against The State Corporation Commission of the State of Kansas; National Exchange Carrier Association, Inc., Carla Stovall, the Attorney General of Kansas, in her official capacity; and Timothy E. McKee, Susan M. Seltsam and John Wine, Commissioners of State Corporation Commission of the State of Kansas, each in their official capacity ("Defendants"), allege and state as follows:

I. INTRODUCTION

This dispute arises from Orders issued by the State Corporation Commission of the State of Kansas (the "Corporation Commission") on December 27, 1996 and February 3, 1997, and the enactment of the Kansas Telecommunications Act, [K.S.A. 66-2000 et seq.] ("The State Act"), on July 1, 1996. The Corporation Commission's Orders ruled on matters related to telecommunications in Kansas, and in particular, to the Kansas Universal Service Fund. Among other things, the Orders directed Commercial Mobile Service ("CMS") providers, also known as wireless providers, to contribute to the Kansas Universal Service Fund. The Corporation Commission also found that neither the State Act, nor the Corporation Commission's rulings were inconsistent with or preempted by the Communications Act of 1934, as amended, 47 U.S.C. § 151, et seq.

But the Corporation Commission was wrong. In the absence of a finding that Commercial Mobile Services are a substitute for a substantial portion of land line telephone exchange services within the State of Kansas, neither the State of Kansas nor the Corporation Commission can require CMS providers to contribute to the Kansas Universal Service Fund.

Plaintiffs in this case are members of the Commercial Mobile Services industry operating within the State of Kansas, and face immediate and irreparable harm if the Corporation Commission's unlawful Orders are not declared invalid.

II. PARTIES

1. Mountain Solutions, Inc. ("Mountain Solutions") is a corporation duly organized and existing under the laws of the State of Colorado with its principal place of business at 7220 West Jefferson in the City of Lakewood, County of Adams, State of Colorado. Mountain Solutions has acquired licenses issued by the Federal Communications Commission ("FCC") to

provide Personal Communication Services in Kansas. Mountain Solutions is a provider of CMS as that term is defined in section 332 of the Communications Act, 47 U.S.C. § 332.

2. Plaintiff Sprint Spectrum, L.P. ("Sprint Spectrum") is a limited partnership duly organized and existing under the laws of the state of Delaware with its principal place of business at 4900 Main Street, in the City of Kansas City, County of Jackson, State of Missouri. Sprint Spectrum does business under the name of Sprint PCS. Sprint Spectrum has acquired licenses from the FCC to provide Personal Communication Services in Kansas. Sprint Spectrum is a CMS provider.

3. Liberty Cellular, Inc. ("Liberty Cellular") is a corporation duly organized and existing under the laws of the State of Kansas with its principal place of business at 621 Westport Boulevard, in the City of Salina, County of Saline, State of Kansas. Liberty Cellular does business under the name of Kansas Cellular and provides Cellular Services within the State of Kansas pursuant to licenses issued by the FCC. Liberty Cellular is a CMS provider.

4. Topeka Cellular Telephone Company, Inc. ("Topeka Cellular") is a Kansas Corporation duly organized and existing under the laws of the State of Kansas, with its principal place of business at 10895 Lowell, City of Overland Park, County of Johnson, State of Kansas. Topeka Cellular is authorized by the FCC to provide cellular services within the State of Kansas. Topeka Cellular is a CMS provider.

5. CMT Partners is a general partnership duly organized and existing under the laws of Delaware with its principal place of business at 10895 Lowell, City of Overland Park, County of Johnson, State of Kansas. CMT is authorized by the FCC to provide cellular services within the State of Kansas. CMT Partners is a CMS provider.

6. AirTouch Cellular of Kansas, Inc. ("AirTouch") is a Kansas Corporation duly organized and existing under the laws of the State of Kansas, with its principal place of business at 10895 Lowell, City of Overland Park, County of Johnson, State of Kansas. AirTouch is authorized by the FCC to provide cellular services within the State of Kansas. AirTouch is a CMS provider.

7. Mercury Cellular of Kansas, Inc. ("Mercury Cellular") is a Kansas Corporation duly organized and existing under the laws of the State of Louisiana, with its principal place of business at Hibernia Tower, One Lake Shore Drive, 19th Floor, City of Lake Charles, Parrish of Calcasieu, State of Louisiana. Mercury Cellular is authorized by the FCC to provide cellular services within the State of Kansas. Mercury Cellular is a CMS provider.

8. Western Wireless Corporation ("Western Wireless") is a corporation duly organized and existing under the laws of the State of Washington with its principal place of business at 2001 NW Sammamish Road, Suite 200, City of Issaquah, County of King, State of Washington. Western Wireless is authorized by the FCC to provide cellular services within the State of Kansas. Western Wireless does business under the name Cellular One in parts of Kansas. Western Wireless is a CMS provider.

9. DCC PCS, Inc. ("DCC PCS") is a corporation duly organized and existing under the laws of the state of Oklahoma, with its principal place of business at 13439 North Broadway Extension, Suite 100, in the city of Oklahoma City, State of Oklahoma, County of Oklahoma. DCC PSC, Inc. has acquired a license from the FCC to provide Personal Communications Services within the State of Kansas. DCC PCS is a CMS provider.

10. Dobson Cellular of Kansas/Missouri, Inc. ("Dobson Cellular") is a corporation duly organized and existing under the laws of the State of Oklahoma with its principle place of

business at 13439 North Broadway Extension, Suite 100, in the city of Oklahoma City, State of Oklahoma, County of Oklahoma. Operating under the business name of Cellular One, Dobson Cellular offers cellular services within the State of Kansas as authorized by the FCC. Dobson Cellular is a CMS provider.

11. Defendant, The State Corporation Commission of the State of Kansas (the "Corporation Commission") is a state agency organized under K.S.A. § 66-101, et seq., for the purpose of regulating public utilities in the State of Kansas. The address of the Corporation Commission is 1500 S.W. Arrowhead, Topeka, Kansas 66604-4027. Pursuant to K.S.A. § 60-304(d)(5), service of process should be made upon the Attorney General of the State of Kansas, Judicial Center, Second Floor, Topeka, Kansas 66612.

12. Defendant National Exchange Carrier Association, Inc. ("NECA") is a Delaware not-for-profit corporation that has been selected by the Defendant Corporation Commission as the administrator of the Kansas Universal Service Fund. NECA's address is: 1001 Craig Road, St. Louis, Missouri 63146. NECA's Registered Agent for service of process is The Corporation Company, Inc., 515 South Kansas Ave., Topeka, Kansas 66603

13. Defendant, Carla Stovall, the Attorney General of the State of Kansas, is named in her official capacity. Service of process on the Attorney General should be made by certified mail to The Attorney General of the State of Kansas, Judicial Center, Second Floor Topeka, KS 66612.

14. Defendant, Timothy E. McKee, a Commissioner of the State Corporation Commission of the State of Kansas, is named in his official capacity. Service of process on Timothy E. McKee should be made by certified mail to The Attorney General of the State of Kansas, Judicial Center, Second Floor Topeka, KS 66612.

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(3) State Preemption. -- (A) Notwithstanding Sections 2(b) and 221 (b), no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services. Nothing in this subparagraph shall exempt providers of commercial mobile services (where such services are a substitute for land line telephone exchange service for a substantial portion of the communications within such State) from requirements imposed by a State commission on all providers of telecommunications services necessary to ensure the universal availability of telecommunications service at affordable rates...

47 U.S.C. § 332(c)(3) (emphasis supplied).

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31. In its December 27, 1996 Order, the Corporation Commission directed CMS providers, among other telecommunications providers, to contribute to the KUSF. The Corporation Commission found that neither the State Act nor the Corporation Commission's rulings were in violation of, or inconsistent with, the Federal Act. However, in so ruling, the Corporation Commission failed to make a finding required under the Federal Act, viz., that CMS providers are a substitute for a substantial portion of land line telephone exchange services within the State of Kansas. The Corporation Commission failed to address the issue altogether.

32. In Paragraph 187 of the December 27, 1996 Order, the Corporation Commission held that CMS providers must contribute up to 14.1% of their retail revenue to the KUSF in accordance with Paragraphs 109 and 110 and the operative paragraph appearing on page 77 of the Order. This mandate applies to both Cellular Service and Personal Communications Service providers, both of which are CMS providers..

33. But under the Communications Act, neither the State of Kansas nor the Corporation Commission can require Commercial Mobile Service providers to contribute to the Kansas Universal Service Fund in the absence of a finding that CMS is a substitute for a substantial portion of land line telephone exchange services within the State of Kansas .

34. The Corporation Commission's Order and the State Act completely ignore the preemption mandate in Section 332(c)(3) of the Communications Act. The Corporation Commission's failure to acknowledge and defer to federal preemption is in violation of the Supremacy Clause in Article VI, Cl. 2 of the Constitution of the United States and will cause Plaintiffs imminent and irreparable harm.

35. On January 14, 1997, Mountain Solutions, Sprint Spectrum, Mercury Cellular, CMT Partners, Topeka Cellular and AirTouch filed Petitions for Reconsideration requesting that the Corporation Commission reconsider its findings in Paragraph 187, in which it unlawfully imposed upon CMS providers an obligation to fund the KUSF. True and correct copies of those Petitions for Reconsideration are attached hereto, and incorporated herein, at Exhibit B.

36. On February 3, 1997, the Corporation Commission issued an Order on Reconsideration in which it denied Sprint Spectrum's, Mountain Solutions', CMT Partners', Topeka Cellular's and AirTouch's Petition for Reconsideration of its findings in Paragraph 187 and in paragraphs related thereto. The Corporation Commission refused to consider the Petition for Reconsideration filed by Mercury Cellular on the grounds that Mercury Cellular was not a formal party to the KUSF proceeding.

37. Prior to the Corporation Commission Orders of December 27, 1996 and February 3, 1997, and pursuant to K.S.A. § 66-1143(b), the Corporation Commission had no jurisdiction over Plaintiffs and had not exercised jurisdiction over them.

38. On February 14, 1997, NECA sent Plaintiffs a KUSF packet. In the packet, NECA directs Plaintiffs to pay a 9% assessment on all intrastate retail revenues beginning in the month of March, 1997. On April 15, Plaintiffs are required to make KUSF payments to NECA based on March, 1997 revenues. Payments are to be made on the 15th day of each following month based on revenues from the proceeding month. In 1998, the assessment will rise to 12.13% and in 1999, to 13.68%.

39. NECA's directions were made pursuant to the December 27, 1996 Order of the Corporation Commission.

40. On February 19, 1997, the Corporation issued an order authorizing NECA to assess late payment fees for any delinquent KUSF payment.

COUNT I - PRELIMINARY AND PERMANENT INJUNCTION

41. Plaintiffs incorporate by this reference the allegations of paragraphs 1 through 40 as though fully set forth herein.

42. Plaintiffs Liberty Cellular, CMT Partners, Topeka Cellular, AirTouch, Western Wireless, Dobson Cellular and Mercury Cellular (sometimes referred to as the "Cellular Plaintiffs") currently provide cellular services throughout the State of Kansas. If the Cellular Plaintiffs choose not to charge customers the KUSF assessment, the contribution paid by the Cellular Plaintiffs will be a substantial portion of their future pre-tax income. This will have a severe impact on the Cellular Plaintiffs' future business plans and marketing opportunities. If the Cellular Plaintiffs choose to pass the KUSF assessment through to their customers, which they believe they will be forced to do, the Cellular Plaintiffs risk losing a substantial number of their customers and usage of service, with a concomitant loss of substantial revenue.

43. Plaintiffs Mountain Solutions, Sprint Spectrum and DCC PSC (the "PCS Plaintiffs") are in the process of building facilities from which they will offer services within the State of Kansas in the near future. An additional 9% to 13.68% cost of entry into the Kansas market would severely inhibit the offering of Personal Communications Services within the state of Kansas. Should the PCS Plaintiffs choose to charge these assessments to their future customers, the market effect in terms of customers and usage of service would be substantial and potentially devastating.

44. Additionally, the local calling areas for Cellular Services and Personal Communications Services are not defined by state lines and extend beyond Kansas into Nebraska, Missouri and Oklahoma. Therefore, an additional sophisticated billing system to separate revenues derived from purely intrastate calls would be required under the Corporation Commission's Order of December 26, 1997.

45. If the Corporation Commission Order and the State Act are not declared invalid by this Court, and if their enforcement is not immediately enjoined, the Cellular Plaintiffs will suffer irreparable injury in that the increase in the retail revenue that Cellular Plaintiffs will have to contribute to the KUSF will have a dramatic impact on their future business and jeopardize a substantial portion of their customer base. The damage that will arise from such an impact on Cellular Plaintiffs' future revenue and customers base cannot be recovered from the Defendants; therefore, there is no adequate remedy at law.

46. If the Corporation Commission Order and the State Act are not declared invalid by this Court, and if their enforcement is not immediately enjoined, the PCS Plaintiffs will suffer irreparable injury in that they would be required to expend a considerable amount of non-recoverable up-front cost to comply with the Corporation Commission Order. Additionally, the